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In the Supreme Court of the United States

OCTOBER TERM, 1971

JOHN IKE GRIFFITH, PETITIONER,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Northern District of Alabama, petitioner was convicted of five counts of mail fraud, in violation of 18 U.S.C. 1341, and one count of conspiring to use the mails to defraud, in violation of 18 U.S.C. 371. Petitioner was sentenced to five years' imprisonment and fined $10,000 on the conspiracy count, and given concurrent five year sentences on two of the substantive counts; he received concurrent sentences on the remaining three substantive counts of three years' probation to begin upon release from custody. A special condition of probation imposed on the last substantive count was that he pay the fine and costs.

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The essence of the fraud was the sale of spurious Alabama divorce papers to out-of-state residents who were led to believe that they were obtaining valid divorce decrees. Petitioner, a disbarred attorney, advertised himself as a licensed attorney who specialized in procuring Alabama divorces for non-residents. Petitioner maintained a supply of blank divorce forms presigned by a state judge (a co-defendant who pled guilty to the conspiracy count), which he would fill out in his office in the presence of each client and to which he would affix a spurious court seal. The papers, when completed, were kept on file at his office rather than being filed, recorded and indexed as official records at the courthouse. Testimony concerning this fraudulent operation was given by numerous victims of the fraud.

1. Petitioner asserts that reversible error was committed when a sworn statement of a witness, which she had previously given to the Birmingham Bar Association, was improperly withheld from him after the witness completed her direct testimony (18 U.S.C. 3500).[1] The document apparently was not turned over to defense counsel because the United States Attorney was of the view that it did not come within the scope of 18 U.S.C. 3500 (Pet. 16).[2] The document was,

[1] An almost verbatim recitation of the witness' affidavit to the Birmingham Bar Association was contained in an application for a search warrant which was obtained prior to indictment (Suppl. R. 29–31). The record indicates that petitioner's counsel was fully aware of this affidavit (Pet. 6).

[2] Prior to its amendment in 1970, 18 U.S.C. 3500 was applicable only to statements made "to an agent of the Government." This phrase was deleted by Pub. L. 91–452, § 102 (1970). 18 U.S.C. 3500 has now been held to apply to any statement

however, turned over to the trial judge who examined it and concluded that it did not contain "any information that would be favorable to the defendant or would be of any additional assistance to counsel for the defendant in conducting cross-examination or that would call for further cross-examination. [There was] * * * no conflict in the witness' testimony and between the testimony of the witness and the statement" (Pet. 18). The court of appeals, on whose opinion we rely, found that the testimony of the witness "was merely cumulative [illegible] testimony of at least 13 other witnessess" who were victims of the petitioner's illegal conduct and that the failure to turn the document over to defense counsel was harmless error[3] (Pet. App. A, p. 3). In light of the finding of the district court with respect to the contents of the document and the overwhelming evidence of guilt, the decision of the court of appeals is clearly correct.

2. There is no merit to petitioner's contention that reversible error was committed when the district court permitted a witness to testify that her signature on papers used by her husband to obtain a purported Alabama divorce through petitioner was a forgery. As petitioner acknowledges, the trial court specifically instructed the jury—both at the time that

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of a witness in the possession of the prosecutor (Pet. App. A. p. 2, n. 2). The trial here took place six months after the effective date of the amendment. Petitioner's counsel did not call the amendment to the attention of the trial judge nor did he move to strike the testimony of the witness pursuant to 18 U.S.C. 3500(d).

[3] A copy of the document in issue was appended to the brief filed by the United States in the court of appeals.

the testimony was given and again in its final instructions—that the forgery was not chargeable to petitioner (Pet. 25–26). The instructions were sufficient to cure any prejudice resulting from the testimony (Cf. *Spencer* v. *Texas*, 385 U.S. 554, 565) and, in any event, any error committed was harmless in light of the strong evidence of guilt.

It is therefore respectfully submitted that the petition for a writ of certiorari be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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